

REMARKS

The last Office Action has been carefully considered.

In this Office Action the Examiner rejected the claims under 35 U.S.C. 102(b) over the new reference, namely the patent to Wiezorek.

With the present communication applicants have amended claim 13, the broadest claim on file, to clarify the present invention and also added claim 14 which corresponds to claim 11 submitted during the prosecution.

It was respectfully submitted that the new features of the present invention which are now defined in claim 13, the broadest claim on file, are not disclosed in the reference.

Claim 13 specifically defines a holding device 10 for a beverage container which is intended for installation in a holdable arm rest in a motor vehicle.

The device has a carriage 14 which is guidable as a drawer to be displaceable back and forth between a push-in position and pulled-out

position, so that a beverage container can be inserted into the holding device when the carriage is in the pulled-out position. The carriage 14 during its displacement between the above mentioned positions is guided by guiding means. A gravity locking device 40 is provided, which is operative under the action of gravity and locks the carriage 14 in the pushed-in position. The device further has a holder 16 with an insertion opening for a beverage container, and it is raisably guided on the carriage, so that when the carriage is pulled out the holder is raised, while when the carriage is pushed in, the holder is lowered back onto said carriage.

Turning now to the Examiner's grounds for the rejection of the claims over the art and in particular to the patent to Wiezorek applied by the Examiner, it can be seen that this reference discloses an automotive cup holder formed as part of a vehicle arm rest. While the device of the present invention and the device disclosed in the reference belong to the same art, the patent to Wiezorek does not teach the new features of the present invention as defined in claim 13. The automotive cup holder disclosed in the patent to Wiezorek does not have any gravity lock device which is operative under the action of gravity and locks the carriage. The Examiner's statement that the patent to Wiezorek anticipates the present invention since it discloses a gravity lock device is not understood. It is not clear what elements of the automotive cup holder disclosed in the reference constitute

a gravity lock device mentioned by the Examiner. In applicant's opinion the automotive cup holder disclosed in the reference does not have a gravity lock device and does not have any elements which can be considered to be components of a gravity lock device which is operative under the action of gravity and locks the carriage. The Examiner stated further that the holder can be raised on the carriage when it is pushed out. This statement is also not understood. It is not clear how the holder can be raised relative to the carriage.

It is respectfully submitted that the new features of the present invention which are now defined in claim 13 are not disclosed in the patent to Wiezorek, which constitutes a new reference applied by the Examiner after four years of very lengthy prosecution. In connection with the Examiner's anticipation rejection, it is believed to be advisable to cite the decision in *re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the automotive cup holder disclosed in the patent to Wiezorek does not have each and every element of the holding device of the present invention as defined in claim 13, in particular it does not have the

elements specified hereinabove, and therefore the anticipation rejection based on this reference should be considered as no longer tenable and should be withdrawn.

As for the dependent claims, these claims depend on the independent claims, they share its presumably allowable features, and therefore they should be allowed as well.

The Examiner's attention is respectfully directed to the fact that there has been a very long prosecution in the above identified application, and after many years of the prosecution a completely new reference was discovered and applied against the claims. It is therefore respectfully requested to thoroughly consider the arguments presented in this Amendment and allow the present application.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be

helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



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